THE COMMITTEE ON ENERGY AND COMMERCE

INTERNAL MEMORANDUM

April 5, 2011

To: Members and Staff, Subcommittee on Commerce, Manufacturing, and Trade

From: Majority Committee Staff

Re: Hearing on "H.R. __Legislation to Revise the Consumer Product Safety Improvement Act"

I. Summary

On Thursday, April 7, 2011, at 9:00 a.m., in 2123 Rayburn House Office Building, the Subcommittee on Commerce, Manufacturing and Trade will hold a hearing entitled, "Discussion Draft of H.R. ___, a bill that would revise the Consumer Product Safety Improvement Act". Witnesses are by invitation only.

The purpose of this hearing is to examine the draft legislation addressing a number of problems that have been identified with the Consumer Product Safety Improvement Act of 2008 (CPSIA). The draft legislation's objectives are:

1. to reduce the regulatory burdens created by CPSIA where possible to do so without harming consumers;
2. to enhance the Consumer Production Savety Commission's (CPSC) ability to investigate complaints and to prioritize based on risk; and,
3. to improve the utility and accuracy of information in the CPSC's public database.

II. Witnesses

Two panels of witnesses will testify before the Subcommittee.

Panel I:

Robert J. Howell
Assistant Executive Director
Hazard Identification and Reduction
U.S. Consumer Product Safety Commission

Barbara D. Beck, Ph.D., DABT, FATS

Panel II:

Paul C. Vitrano
General Counsel
Motorcycle Industry Council

Frederick Locker, Partner
Locker Greenberg & Brainin PC

Sheila A. Millar, Partner
Keller and Heckman LLP

Charles A. Samuels, Member
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

Dan Marshall
Vice President
Handmade Toy Alliance
Co-Owner, Peapods Natural Toys & Baby Care

Erika Z. Jones, Partner
Mayer Brown, on behalf of Bicycle Product Suppliers Association

Minority witnesses had not been determined as of the time this memo is being circulated.

III. Background

There is bipartisan consensus that the CPSIA created a number of problems for manufacturers and retailers of products intended for children age 12 and under. In January 2010, the CPSC sent a report to Congress identifying problems with the law and recommending solutions. There were four unanimous recommendations: to make the 100 ppm lead limit prospective; to provide the CPSC more flexibility to grant exclusions to the lead limits; to provide exclusion for printed materials; and to provide the Commission greater flexibility to address small manufacturers' and crafters'concerns for third party testing. No fewer than 12 bills were introduced in the 111th Congress by Members of both parties to address particular issues. The subcommittee held a hearing in April 2010 on a discussion draft proposed by Mr. Waxman.

During a subcommittee hearing on February 17, 2011 hearing, both CPSC Chairman Inez Tenenbaum and Commissioner Northup testified the law does not grant the flexibility to address many of the identified problems related to the lead content limits and the testing requirements. Commissioner Northup also highlighted the associated economic impact of the law estimated to be several billion dollars.

Additional background on CPSIA can be found in the Hearing Memorandum for the February 17, 2011 hearing.

IV. Legislation Summary

A section-by-section summary of the staff discussion draft follows.

Sec. 1 Definition of children's product: Amends Sec. 3 of the CPSA by striking "12 and under" and replacing with a lower age to be determined. This reduces the scope of products regulated. The 2008 Senate-passed bill legislated only for age 6 and under. The House bill had a regulated age of 12 and under.

Sec. 2 Application of Lead Limit: Amends Sec. 101 of CPSIA to postpone the deadline for step down to 100 ppm, allowing the Commission to consider whether 100 ppm is technologically feasible before the deadline rather than after; allows CPSC to apply the lead limits to products up to age 13 based on risk; makes lead limits applicable only to products manufactured after they became effective; sets new limits, at a level to be determined, for lead in parts of children's products that are made from metal alloys and cannot be swallowed; establishes exception for parts that have negligible amounts of lead if they cannot be swallowed (allows the Commission to revise the amount); allows sale or distribution of used products that do not meet lead limits in most cases to address the problem of thrift stores and libraries.

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Sec. 3 Application of third-party testing: Amends Sec. 14 of the CPSA to preserve third-party testing requirement for certain priority standards (paint, children's jewelry, cribs, pacifiers and small parts); gives the Commission flexibility to require third-party testing for other standards only if it establishes exemptions or alternative testing requirements for products made in small quantities, and if it determines that the benefits of third-party testing justify the additional costs; stays enforcement of other recently adopted third-party testing requirements pending review by the Commission to minimize burden on low-volume product lines and ensure benefits justify costs.

Sec. 4 Durable nursery products standards: Amends Sec. 104 of CPSIA to provide for automatic revision, subject to Commission veto, of the durable nursery product standards whenever the voluntary standard is revised; limits retroactive impact of the crib standard to licensed day care centers subject to certain state safety laws; and eliminates retroactive impact for future revisions of the standard.

Sec. 5 Application of Section 106 to FDA regulated products: Amends Sec. 106 of CPSIA to remove FDA requirements from CPSC-enforced toy standard.

Sec. 6 Application of phthalates standard: Amends Sec. 108 of CPSIA to reduce the scope of parts and products to which the 1000 ppm limit applies; makes the limit prospective; and requires the Commission to act on Chronic Hazard Advisory Panel report.

Sec. 7 Exemption authority for tracking labels requirement: Amends Sec. 14 of CPSA to allow the Commission to exempt products or classes of products and set alternative requirements from the labeling requirement if it is not economically practicable.

Sec. 8 Requirement for public database: Amends Sec. 6A(b) of the CPSA to allow reports of harm from people who have an actual injury or risk of injury plus family members and other authorized representatives; creates a process for strengthening product identification, limiting inaccurate information and expediting CPSC investigations. Additionally, it amends Sec. 19 to make it a prohibited act to misrepresent a submission to the database.

Sec. 9 Subpoena authority: Amends Sec. 27 of the CPSA to strengthen the Commission's subpoena authority

Sec. 10 Availability of certain personal and medical information to the CPSC: Provides clarification that the CPSC shall be treated as a public health authority in order that it may receive information from hospitals relating to injuries, deaths, diseases or other health impairments that may be related to consumer products.

Sec. 11 Effective date: Establishes the effective date of the amendments of the Act as having taken effect on the date of enactment of the CPSIA.

Please contact Brian McCullough, Gib Mullan, or Shannon Weinberg at ext. 5-2927 with any questions.